

Shawnee County, Kansas  
Register of Deeds  
Marilyn L. Nichols  
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**AMENDMENT NO. 17 TO  
DECLARATION OF CONDOMINIUM OF  
PHEASANT RUN, AN EXPANDABLE CONDOMINIUM IN TOPEKA,  
SHAWNEE COUNTY, KANSAS**

WHEREAS, a Declaration of Condominium for Pheasant Run Buildings 1, 2, 3, 4, 5, 6 and 7, a Condominium in Topeka, Shawnee County, Kansas, has been filed, together with exhibits, with the Register of Deeds of Shawnee County, Kansas and recorded therein at Book 5, Page 94-176, on the 16th day of May, 1979; and

WHEREAS, Amendment Nos. 1 through 16, adding buildings 8 through 32 and making certain other amendments to the Declaration of Condominium have subsequently been filed with the Register of Deeds of Shawnee County, Kansas; and

WHEREAS, in accordance with Paragraph 25 of the Declaration, as amended, and Article III, Paragraph 9 of the Articles of Incorporation of Pheasant Run Condominium Homeowners Association, Inc., ("the Association") all of the members of the Board of Directors have signed and acknowledged a resolution amending the Declaration, as amended, for the purposes of clarifying the Association's right in and to a lien against apartment units for unpaid common area expense assessments and assessment of attorney fees as part of the costs of collecting unpaid .

NOW THEREFORE, the Association amends paragraphs 8, 14.9 and 14.11 of the Declaration of Condominium as follows:

**8. RESTRICTIONS ON THE USE, SALE OR OTHER TRANSFER OF APARTMENT UNITS AND UNDIVIDED INTEREST IN COMMON AREA**

The following itemized paragraph shall constitute restrictions imposed upon the use, sale, or other transfer of apartment units and the corresponding undivided interest in common areas and facilities within this Condominium project:

- (a) Each of the apartment units, a total of one hundred and two (102) located in Buildings 1 through 32, as shown on exhibits "A-1" through "A-7" attached hereto and as added by amendments 1 through 15 to this Declaration, are intended to be used and occupied exclusively as owner-occupied single-family residences. Further, the occupancy at one time of any condominium apartment unit shall be limited to a maximum of two persons over the age of eighteen (18) years and two persons under the age of eighteen (18) years. Provided, further, that at no time may a person(s) under the age of eighteen (18) occupy any apartment unit unless there is, at the same time, at least one (1) person over eighteen (18) years occupying the apartment unit. No apartment unit owner or other party in their behalf or stead shall permit any multiple family, office, commercial or other more intensive use of any part or all of such apartment units or the common area facilities. Any such attempted use shall be prohibited by the Pheasant Run Condominium Homeowners Association, Inc. and the enforcement of such violation and the penalties therefor shall be prescribed by the Rules and Regulations to be established, promulgated and enforced by said Homeowners Association.
- (b) No apartment unit or common area may be leased to any other person or entity by the owner for any reason without the prior written consent of the Board of Directors of the Association and granting of a hardship waiver by the Board of Directors under paragraph 8(d) of this Declaration.
- (c) Written leases which are in existence on the date Amendment 16 of this Declaration is recorded shall not be impaired by this Declaration. Leases existing on that date that are in accordance with

paragraph 8(a) of this Declaration may be renewed or extended, in writing, if copies are delivered to the Board of Directors.

(d) In the event that an owner, due to medical reasons or other good cause shall be unable to occupy an apartment for a period in excess of six (6) months and based upon such good cause desires to lease the apartment, the owner may make application for a waiver of the lease restrictions herein to the Board of Directors of the Association. The Board of Directors, after a public hearing with notice to all owners, shall have the right to approve one, twelve (12) month lease of an apartment if a majority of the Board of Directors in their sole reasonable judgment finds that such lease does not violate the intent of these restrictions by reasons of good cause shown by the owner requesting permission to enter into such lease.

(e) Any apartment unit owner, other than the developer, who wishes to sell his or her or its unit to any person or other entity shall first give written notice of any such proposed sale to the appropriate agent for the Board of Directors of the pheasant run condominium homeowners association, Inc. with such written notice addressed to the Board of Directors of the Association. Provided, however, that such notice shall not be given less than twenty (20) days preceding the date of the intended sale. Provided, further, that such written notice shall set forth the names of the intended parties, the time and manner of closing, including the name and address of the closing agent, and other terms and conditions of performance as they relate to this condominium. The Board of Directors retains the right to approve or disapprove, in writing, the transfer, mortgage and ownership of condominium apartment units before further action is taken by the seller after the 20 days notice is given.

(f) In the event that there are past due and unpaid common area expense assessments assessed against an apartment unit to be sold, then said assessments shall be a lien against the apartment unit and upon all tangible personal property located within said unit as set forth in paragraph 14.9(b) of the Declarations. The Board of Directors of the Homeowners Association or its Managing Agent shall notify the present owner of such and may proceed to notify the closing agent of the Association's lien. The Association's lien shall be paid from proceeds of the transaction, and the Association's lien shall exist and be effective whether or not an additional lien statement is filed with the Register of Deeds of Shawnee County, Kansas and shall be prior to all other liens except (i) tax liens on the apartment in favor of any assessing unit and special district, (ii) all sums unpaid on a first mortgage of record, and (iii) any sums unpaid on a subsequent mortgage of record that was recorded prior to the accrual of unpaid assessments as set forth in the Association's records.

#### **14.9 ASSESSMENTS**

The making and collection of assessments against apartment owners for common expenses will be pursuant to this Declaration, the Bylaws of the Association, the Kansas Apartment Ownership Act, as amended, and the Management Agreement, as supplemented by the following provisions:

(a) **Interest: Application of Payments**

Assessments and installments on such assessments, which are paid on or before ten (10) days after date when due, will not bear interest; but all sums not paid on or before ten (10) days after the date when due will bear interest at such rate as shall be established by the rules and regulations of the Association. All payments upon accounts received by the Association from the owners will be first applied to interest and then to the assessment payment first due.

(b) Lien: For Assessments

The Association shall have a lien upon each apartment unit and upon all tangible personal property located within each apartment unit for any amount of unpaid assessments, together with interest hereinabove provided for, except that such liens will be subordinate to the liens created by mortgages or deeds of trust properly recorded in the office of the register of deeds of Shawnee County, Kansas, prior to the accrual of unpaid assessments as determined by the records of the Association. Liens against apartments, approval of liens and effective part payment shall be provided by K.S.A. 58-3109, as amended, of the Kansas Apartment Ownership Act. Likewise, priority of liens shall be governed by K.S.A. 58-3123, as amended, of the Kansas Apartment Ownership Act.

(c) Assignment of Claim and Lien Rights

The Association will have the right to assign its claim and lien rights for the recovery of any unpaid assessments and interest thereon to the Developer or to any apartment owner or group of apartment owners or to a third party.

(d) Joint and Several Liability of the Grantor and Grantee of the Common Expenses

The Grantee of an apartment unit shall be held jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the conveyance pursuant to K.S.A. 58-3124. A grantee may, however, not be held liable for any such assessment against the grantor in excess of the amount certified as due by the manager or Board of Directors of the Association delivered to the grantee at the grantee's request. The failure of the Association to file a lien with the office of the Register of Deeds of Shawnee County, Kansas, for past unpaid assessments shall not be the reason for the non-liability of the grantee for such assessments. Provided, that no mortgagee of the owner of an apartment unit shall be held liable for previous unpaid assessments of common expense which accrued prior to the acquisition of title to such apartment unit by the mortgagee whether by foreclosure or by a deed in lieu of foreclosure, except to the extent that said mortgagee is a second or subsequent mortgagee whose security interest in the property was perfected after the unpaid assessments began to accrue.

**14.11 ASSOCIATION'S RIGHT TO ENFORCE ASSESSMENTS**

In addition to any remedies or liens provided by law, if an apartment unit owner is in default of the regular monthly payment of charges and assessments or any special assessment for a period of thirty (30) days, the Board of Directors may bring suit for and on behalf of the Association or as representatives of all apartment unit owners, to enforce collection thereof or to foreclose the lien hereinafter provided; there shall be added to the amount due the cost of said suit, together with legal interest and any other costs authorized by law, including but not limited to reasonable attorney fees incurred by the Association in seeking to enforce collection of assessments and/or foreclosure of a lien therefore. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common areas of the facilities or by the abandonment of his or her apartment unit. Likewise, no apartment unit owner can or shall escape liability for assessments charged pursuant to additional common area facilities developed as the result of the expansion of this condominium pursuant to the expandable provisions herein contained, if the development of such facilities and the expansion was done pursuant to the requirements of the Kansas Apartment Ownership Act and this Declaration. Further, such apartment unit owner cannot escape liability for his or her share of special assessments levied by the Association pursuant to the requisite consent required from apartment unit owners even though such charged apartment unit owner did not vote on the prevailing side of such questions. The unpaid common expenses assessed to an apartment unit owner shall constitute a lien against the unit owned by the unit owner and against such unit

